

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX – ORIGINAL ASSESSMENT SUPPLANTED BY REVISED ASSESSMENT** – When the evidence so dictates the original assessment will be supplanted by a revised assessment which more accurately reflects the amount of tax due.

**ADMINISTRATIVE DECISION**

The Auditing Division of the Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of January 1, 1996 through December 31, 1999, for tax and interest, through December 31, 2000.

Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed a petition for reassessment.

**FINDINGS OF FACT**

1. During the assessment period the Petitioner was engaged as a construction contractor whose work consists primarily of excavation, landscaping, and hydro seeding activities. All of Petitioner's work constituted capital improvements to real property.

Although contractors like the Petitioner are required to pay sales or use tax on all purchases of material for use in performing contracting, an exception to the general rule exists for a contractor who purchases materials and services for use in reclamation or environmental work at a coal-mining site.

2. At the initial hearing, the administrative law judge requested that Division's tax auditor and the Petitioner meet for the purpose of reviewing invoices which Petitioner argued are exempt from sales or use tax and that the Division would then issue an amended assessment to reflect same.

3. At the reconvened hearing, Division's counsel offered into evidence the revised assessment.

## **DISCUSSION**

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10-9. See also Code § 11-10A-10(e).

At the initial hearing Petitioner made the case that certain of its purchases were exempt from sales tax, prompting this tribunal to order the parties to meet for the purpose of revising the original assessment, which has now been accepted by this tribunal.

## **CONCLUSION OF LAW**

In a hearing on a petition for reassessment, the burden of proof is upon the taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. In this matter the Petitioner has shown that the original assessment was not correct.

**WHEREFORE**, it is the **DISPOSITION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of January 1, 1997 through December 31, 1999, should be and is hereby **MODIFIED** in accordance with the above Determination(s) for tax and interest, for a total revised liability.